

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

v.

ROYAL YORK LIBERATORE FAMILY
LIMITED PARTNERSHIP and JACKIE AVERY,

Defendants.

DECISION AND ORDER

05-CV-718S(Sc)

1. On April 26, 2006, Defendant Royal York Liberatore Family Limited Partnership ("Royal York") moved to vacate the Court's Order dated April 13, 2006, which referred this action to mediation. Counsel for Royal York represents that all parties join in the motion (Docket No. 20, Jay Affirmation, ¶ 8). Although not captioned as such, this motion is essentially one to opt-out of mediation as provided in Section 2.2 of the Alternative Dispute Resolution Plan for the United States District Court, Western District of New York.

2. Royal York's motion is timely, having been filed within ten days of the date of the Referral Order.

3. In sum, Royal York states that the parties previously discussed the possibility of scheduling a settlement conference with Magistrate Judge Victor Bianchini and that it is their joint preference to proceed with a judicial settlement conference rather than mediation.

4. The third full paragraph on page two of the Referral Order states that “the referral of this case to mediation . . . has no effect on the progress of the case toward trial, except that any judicial settlement conferences set forth in the Scheduling Order hereby are adjourned.” It goes without saying that judicial settlement conferences that were discussed, but not included in the Scheduling Order, will not now be scheduled.

5. In addition, Section 2.2(C) of the ADR Plan requires that a party seeking relief from mediation show good cause for the request by stating the reasons why mediation has no reasonable chance being productive.

6. The instant motion suggests the parties are willing to engage in meaningful negotiations aimed at resolving this dispute, but do not wish to do so within the context of the Court’s ADR program. The parties’ stated preference for a judicial settlement conference does not constitute sufficient cause for vacatur of the Referral Order and Defendant Royal York’s motion is therefore denied.

IT HEREBY IS ORDERED that Defendant Royal York’s Motion to Vacate the April 13, 2006 Order referring this case to mediation (Docket No. 20) is DENIED.

SO ORDERED.

Dated: April 28, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge